

AGENDA
CITY COUNCIL MEETING
CITY OF SHELBY
September 17, 2018
6:30 P.M.

ROLL CALL OF MEMBERS
PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

- Regular Council Meeting, 09/04/18 (pgs 5-8)

APPEARANCE REQUESTS

- Agenda Items – Jody Hellegaard, NCMRWA
- Non-Agenda Items

COMMITTEE REPORTS

CITY ATTORNEY

- Northern Montana Storage Storm Water Rate Appeal (pgs 9-20)
- Court MOU with Town of Kevin (pgs 21-22)
- Park Maintenance Agreement with Albertson's (pgs 23-26)

CITY FINANCE OFFICER

- City Judge's Report, August 2018 (pgs 27-47)
- Bank Account Report, Budget Year to Date, Vendor Summary, Enterprise Funds, Statement of Expenditures, Revenues, Cash Flow Report, Project Budgets (pg 48), August 2018
- City of Shelby Delinquent Taxes, 8/31/18 (pg 49)

CITY SUPERINTENDENT

COMMUNITY DEVELOPMENT DIRECTOR

OTHER MATTERS

- NCMRWA – Shelby Line (pgs 50-51)
- Holiday Office Closures (Thanksgiving, Christmas, New Years, 4th of July)
- Arbor Day Proclamation (pg 52)

ADJOURN

CITY OF SHELBY MEETING SCHEDULE

September 17, 2018

6:30 p.m. Regular City Council Meeting

September 24, 2018

6:30 p.m. Park & Recreation Meeting
(Mayor, Superintendent, Rec Director,
Tustian, Casey, Kimmet)

October 1, 2018

6:00 p.m. Audit Committee
(Mayor, Finance Officer, Clark, Tustian,
Moritz)

6:30 p.m. Regular City Council Meeting

October 9, 2018 (Due to Columbus Day Holiday)

6:30 p.m. City-County Planning Board
(Mayor, Deputy City Clerk, City Planner,
Casey, Clark)

CITY COUNCIL PACKET LISTING

- A. Agenda
- B. Agenda Items
 - 1. Minutes of Regular Council Meeting, 09/04/18
 - 2. Northern Montana Storage Storm Sewer Rate Appeal
 - 3. Court MOU with Town of Kevin
 - 4. Park Maintenance Agreement with Albertson's
 - 5. City Judge's Report, August 2018
 - 6. Project Budgets, 8/31/18
 - 7. City of Shelby Delinquent Taxes, 8/31/18
 - 8. 9/7/18 Letter from NCMRWA re: NCMRWA-Shelby Line
 - 9. Arbor Day Proclamation
- C. Correspondence
 - 1. 9/4/18 Letter from Governor Steve Bullock re: Notice of Community Development Block Grant Program-Planning Grant Award
 - 2. 9/6/18 Summary of Port of Northern Montana Board Meeting
 - 3. 9/12/18 Email from Jan Nessel re: MDT Proposes Pavement Preservation Project on Interstate 15 Business Loop
- D. Reports
 - 1.
- E. Handouts
 - 1.

Policy on Conduct and Manner of Addressing Council

The public is invited to speak on any item after recognition by the presiding officer.

1. Public comments will be accepted only on items within the jurisdiction of the City of Shelby.
2. Comments shall be limited to 5 minutes per meeting, unless such time is extended by a majority vote of the Council members.
3. While the Council is in session, those in attendance must preserve order and decorum. No member of the public shall delay or interrupt the Council proceedings; disturb any member who may be speaking; or refuse to obey the orders of the Council or its presiding officer.
4. Prepared statements are welcome and should be given to the Finance Officer prior to a Council meeting. Prepared statements that are also read, however, shall be deemed unduly repetitious. All prepared statements for public hearings shall become part of the hearing record.
5. All remarks shall be addressed to the Council as a body and not to any member of the Council or Staff.
6. Public members recognized by the presiding officer, shall:
 - a. Stand, if able
 - b. For the record, give his/her name and address
 - c. If applicable, give the person, firm or organization he/she represents
 - d. Limit comments to the matter of fact
 - e. Address the Council as a body and not to any individual member of the Council or City Staff
 - f. Ask no questions of individuals who are Council members, staff or other public members, except through the presiding officer
 - g. Limit comments to a maximum of 5 minutes, unless such time is extended by a majority vote of Council members.

The Council thanks public members for respectfully and courteously providing constructive and valuable information.

**MINUTES OF A REGULAR COUNCIL MEETING OF THE SHELBY CITY COUNCIL
HELD IN COUNCIL CHAMBERS
SEPTEMBER 4, 2018**

Mayor McDermott called the meeting to order at 6:30 p.m. Present were: Debra Clark, Luke Casey, Trent Tustian, Bill Moritz, and Aaron Heaton, Council Members; Bill Hunt, City Attorney; Tammy Pederson, Deputy Clerk; Lorette Carter, Community Development Director and Rob Tasker, Building Inspector. Absent and excused: Lyle Kimmet, Council Member.

Other citizens present: Greg Friesen, Jane Garsjo, Ron Heptner, Cory May, James Slayton and Joan Stewart.

OPEN PUBLIC HEARING

Mayor McDermott opened the public hearing for the FY 2018-19 Budget and the 2018 Special Assessments.

APPROVAL OF MINUTES

MORITZ MADE A MOTION TO APPROVE THE 8/20/2018 MINUTES. SECONDED BY CASEY. VOTE: AYES - CLARK, CASEY, TUSTIAN, MORITZ, HEATON. NOES - NONE. ABSENT - KIMMET. ABSTAIN - NONE.

APPEARANCE REQUESTS

Street Maintenance Protests - Greg Friesen-Northern Seed, Jane (Nesbo) Garsjo, Cory May and Joan Stewart appeared to protest their street maintenance assessments.

Variance Request - Don Fisher appeared to request a variance from 5' to 3' on the new sidewalk being installed on the north side of his property to preserve the mature tree line.

CASEY MADE A MOTION TO APPROVE THE ABOVE VARIANCE REQUEST. SECONDED BY TUSTIAN. VOTE: AYES - CLARK, CASEY, TUSTIAN, MORITZ, HEATON. NOES - NONE. ABSENT - KIMMET. ABSTAIN - NONE.

CLAIMS REPORT, 8/31/2018

CLARK MADE A MOTION TO APPROVE THE 8/31/2018 CLAIMS. SECONDED BY TUSTIAN. VOTE: AYES - CLARK, CASEY, TUSTIAN, MORITZ, HEATON. NOES - NONE. ABSENT - KIMMET. ABSTAIN - NONE.

BUILDING INSPECTOR

Tasker reported 2 permits issued for August and 14 open permits.

CLOSE PUBLIC HEARING

Mayor McDermott closed the public hearing for the FY 2018-19 budget and the 2018 Special Assessments.

FY 2018-19 BUDGET

CLARK MADE A MOTION TO APPROVE THE FY 2018-19 BUDGET. SECONDED BY TUSTIAN. VOTE: AYES - CLARK, CASEY, TUSTIAN, MORITZ, HEATON. NOES - NONE. ABSENT - KIMMET. ABSTAIN - NONE.

CITY ATTORNEY

1. Resolution No. 1982, 2nd Rdg - FY 2018-19 Street Lighting
MORITZ MADE A MOTION TO APPROVE THE SECOND AND FINAL READING OF RESOLUTION NO. 1982. SECONDED BY CASEY. VOTE: AYES - CLARK, CASEY, TUSTIAN, MORITZ, HEATON. NOES - NONE. ABSENT - KIMMET. ABSTAIN - NONE.
2. Resolution No. 1983, 2nd Rdg - FY 2018-19 Street Maintenance
MORITZ MADE A MOTION TO APPROVE THE SECOND AND FINAL READING OF RESOLUTION NO. 1983. SECONDED BY CASEY. VOTE: AYES - CASEY, MORITZ, HEATON. NOES - CLARK, TUSTIAN. ABSENT - KIMMET. ABSTAIN - NONE.
3. Resolution No. 1984, 2nd Rdg - FY 2018-19 Park Maintenance
MORITZ MADE A MOTION TO APPROVE THE SECOND AND FINAL READING OF RESOLUTION NO. 1984. SECONDED BY CASEY. VOTE: AYES - CLARK, CASEY, TUSTIAN, MORITZ, HEATON. NOES - NONE. ABSENT - KIMMET. ABSTAIN - NONE.
4. Resolution No. 1985, 2nd Rdg - FY 2018-19 2012 Curb, Gutter & Sidewalk Project
MORITZ MADE A MOTION TO APPROVE THE SECOND AND FINAL READING OF RESOLUTION NO. 1985. SECONDED BY CASEY. VOTE: AYES - CLARK, CASEY, TUSTIAN, MORITZ, HEATON. NOES - NONE. ABSENT - KIMMET. ABSTAIN - NONE.
5. Resolution No. 1987 - FY 2018-19 Budget and Tax Levy
CASEY MADE A MOTION TO APPROVE RESOLUTION NO. 1987. SECONDED BY MORITZ. VOTE: AYES - CLARK, CASEY, TUSTIAN, MORITZ, HEATON. NOES - NONE. ABSENT - KIMMET. ABSTAIN - NONE.
6. Resolution No. 1988 - Budget Authority for \$400,000 CDBG Program Grant Funding
CLARK MADE A MOTION TO APPROVE RESOLUTION NO. 1988. SECONDED BY MORITZ. VOTE: AYES - CLARK, CASEY, TUSTIAN, MORITZ, HEATON. NOES - NONE. ABSENT - KIMMET. ABSTAIN - NONE.

OTHER MATTERS

1. CDBG Planning Grant - seeking approval for application to revise the City of Shelby Capital Improvement Plan (CIP).
TUSTIAN MADE A MOTION TO APPROVE THE APPLICATION FOR A CDBG PLANNING GRANT. SECONDED BY CASEY. VOTE: AYES - CLARK, CASEY, TUSTIAN, MORITZ, HEATON. NOES - NONE. ABSENT - KIMMET. ABSTAIN - NONE.

COMMUNITY DEVELOPMENT DIRECTOR

- The City has the ability to apply for CDBG planning grant funds. We would like to revise the Capital Improvements Plan to make it more user-friendly for city/council planning purposes. Included in the council packet is the correspondence with our 2 professional engineering teams and a first draft of the Project Proposal for your review. The match is 1:3.
- The City is looking for fitness instructors to create a calendar of classes for the Shelby Civic Center.
- The Shelby School District #14 Safe Routes to School Walk N' Wheel and Fit Friday program will begin Wednesday, September 12th and Friday, September 14th. Law enforcement (when available) will be walking with kids on Wednesdays in September. The Shelby High School Football team will also be walking with elementary students on Wednesday, September 12th. Athletes will be wearing blue in support of juvenile diabetes awareness.
- The Toole County Extension Office and City of Shelby are partnering to offer a Fall Tree Care Workshop on Tuesday, September 18th from 12 to 1 at the Carousel. Participants are asked to bring a sack lunch. Drinks and ice cream will be for sale. To RSVP, call Kim Woodring at 424-8350 or Lorette Carter at 434-5222.
- The Splash Park will remain open as long as the weather is warm. This fall/winter, city crew will be completing additional improvements to the pool and construction of the ADA play structure in the Splash Park. We are waiting on the LWCF grant agreement for gutter replacement.
- Teagan Tustian, Scout, will be completing his Eagle Scout project this fall redoing the horseshoe pits at Aronow Park. He hopes to have a tournament when the project is completed.
- The City and community volunteers will be completing some improvements in the former Middle School gym in the coming months. The city would like to collect all outstanding keys for the building.
- The water line extension project will be advertised in the coming weeks. The anticipated completion of the project is January of 2019.
- KLJ is working on a new budget for Phase II of the storm water project. This portion is financed with CDBG Public Facilities grant funding.

- The kick off meeting of the Toole County Combined Fund Drive will be Tuesday, September 25th at 6:30pm at the Toole County Office of Public Safety.

ADJOURN

**AT 9:10 P.M. CASEY MADE A MOTION TO ADJOURN THE MEETING.
SECONDED BY CLARK. AYES - CLARK, CASEY, TUSTIAN, MORITZ,
HEATON. NOES - NONE. ABSENT - KIMMET. ABSTAIN - NONE.**

Gary McDermott, Mayor

ATTEST:

Tammy Pederson, Deputy Clerk

William E. Hunt, Jr.

From: Brian Lee <brian@leelawofficepc.com>
Sent: Thursday, August 02, 2018 4:37 PM
To: William E. Hunt, Jr.
Subject: Re: storm drain assessment

Categories: Green Category

OK. Let me know the next steps and whether or not you need me to send a demand letter or do something else to initiate the appeals process.

Brian

On Thu, Aug 2, 2018 at 1:13 PM, William E. Hunt, Jr. <huntlaw@3rivers.net> wrote:

I think that it's not that simple. The storm drain is a municipal utility. And municipal utilities are, by definition, a can of worms. Our rates have to be reasonable and rational. If we lower the rate for one user, then it affects the rights (constitutional due process stuff) of other users.

When we first started looking at establishing the storm drain utility, we put quite a bit of resources into the methodology of the charges and rates. This included consideration of the physical properties of lots (dirt, pavement, gravel, vegetation, buildings, etc.).

So, if we change anything, we have to have good reason and apply it to the whole rate structure.

From: Brian Lee [mailto:brian@leelawofficepc.com]
Sent: Thursday, August 02, 2018 11:43 AM
To: William E. Hunt, Jr. <huntlaw@3rivers.net>
Subject: Re: storm drain assessment

Thanks Bill. What I told Jade I would like to do is settle with the City so that the only portion of my property in the industrial park that is being assessed storm drain taxes is the 40x80 building. That's all I'm trying to achieve here. If we could accomplish that the matter is resolved and I will go away. What do you think?

Brian

On Thu, Aug 2, 2018 at 11:30 AM, William E. Hunt, Jr. <huntlaw@3rivers.net> wrote:

Brian-

I'm working on your storm water system issue and spent some time this week. I don't have an answer for you at this time as it's more complicated than I originally thought. It's pretty high on my radar. It also has the attention and prodding of Gary and Jade. I just want you to know that it hasn't slipped to the bottom of the pile and I had forgotten about it again.

Thanks,

Bill

William E. Hunt, Jr.

Attorney at Law

PO Box 569

201 Main Street

Shelby MT 59474

(406) 434-3900

Fax (866) 868-8943

huntlaw@3rivers.net

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(406) 434-5244

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RESOLUTION NO. 1950

RESOLUTION OF THE CITY OF SHELBY, MONTANA TO
ESTABLISH A BASIS ON WHICH STORM WATER
DRAINAGE SYSTEM CHARGES ARE DETERMINED AND
CHARGED AND APPROVING RATES AND CHARGES
FOLLOWING A PUBLIC HEARING

RECITALS

WHEREAS, the City of Shelby, Montana (the "City") presently owns and operates a sanitary sewerage system for the collection and disposal of sewerage (the "Sanitary Sewer System") and into which storm and other surface waters are being discharged; and

WHEREAS, a piecemeal and undersized storm water drainage network (the "Existing Storm Water Drainage Improvements") has been assembled that directs surface and storm water into the Sanitary Sewer System; and

WHEREAS, the Sanitary Sewer System also takes on storm water that seeps underground and infiltrates pipes and conduits; and

WHEREAS, the surface and storm water entering the Sanitary Sewer System is reducing the life expectancy of and the capacity of the sanitary treatment plant to treat wastewater; and

WHEREAS, the City has been forced to place a moratorium on future subdivisions and connections to the Sanitary Sewer System because of the treatment issues caused, at least in part, by surface and storm water; and

WHEREAS, because of the inadequacy of the Existing Storm Water Drainage Improvements, water events cause property damage and health concerns and interrupt and complicate the affairs of persons in the City; and

WHEREAS, accordingly the City has determined that it is necessary and desirable to establish a separate and distinct storm water drainage system and rules and regulations relating to storm water and drainage and construct improvements for the collection and disposal of storm and surface waters separate and distinct from the Sanitary Sewer System; and

WHEREAS, the City passed Ordinance No. 827 on August 22, 2016 which established the storm water drainage system and set forth regulations for the system; and

WHEREAS, until a new storm water drainage system is constructed and placed in service, the City will continue operating, performing work on, and improving the Existing Storm Water Drainage Improvements, including, without limitation, by flushing out sedimentation and debris with sewer jets; and

WHEREAS, the City has not to date established storm water drainage rates and charges, and thus has no revenue from the Existing Storm Water Drainage Improvements to pay for or

obtain financing to pay the costs of contemplated new construction of and improvements to its storm water drainage system; and

WHEREAS, pursuant to Montana Code Annotated, Title 7, Chapter 7, Parts 42 and 43, and Title 7, Chapter 7, Part 44, M.C.A., the City is authorized to construct, better, improve and extend a storm water drainage system and issue revenue bonds to finance in whole or part the costs thereof; and

WHEREAS, the City Council (the "Council") of the City is further authorized and required by Title 7, Chapter 13, Parts 42 and 43, Title 7, Chapter 7, Part 44, and Title 69, Chapter 7, Part 1, M.C.A., to establish just and equitable rates, fees and charges and rentals for the services and facilities provided by a storm and surface water drainage system so as to make a storm water drainage system self-supporting; and

WHEREAS, the City has committed to establishing a separate and distinct storm and surface water drainage system that will initially consist of the Existing Storm Water Drainage Improvements, which will, to the extent practicable, ultimately be incorporated into and form a part of the new and more expansive storm and surface water drainage system (the "System"), owned and operated by the City; and

WHEREAS, the City is contemplating issuing storm water drainage system revenue bonds in the amount of approximately \$3,850,000 (the "Bonds") to fund improvements to the System, to establish appropriate reserves, and to pay the costs associated with the issuance of the Bonds; and

WHEREAS, it is necessary to collect sufficient revenues to repay the Bonds, pay costs associated with the operation and maintenance of the System, and establish appropriate reserves; and

WHEREAS, under Section 69-7-101, Montana Code Annotated, the City has the power and authority to regulate, establish, and change, as it considers proper, rates, charges, and classifications imposed for utility services to its inhabitants and other persons served by the municipal systems. Rates, charges, and classifications must be reasonable and just; and

WHEREAS, rates, charges, and classifications for the use and availability of the System will be charged to properties in the City that are benefited by or that burden the System (collectively, the "Properties"; each, a "Property"); and

WHEREAS, the City conducted a public hearing on August 1, 2016 to consider establishing the System and a methodology to establish rates and charges and took public comment, and on August 1, 2016, the City approved on first reading Ordinance No. 827 to establish the System and adopted Resolution No. 1941, regarding the intention to establish bases for charging for the use and availability of the System, as existing and to be constructed; and

WHEREAS, notice of public hearing was published on August 3, 2016, August 10, 2016, and August 17, 2016, and was mailed to all users of the City's System on August 3, 2016, notifying the public and users of the System that pursuant to Resolution No. 1941, adopted August 1, 2016, it was the intention of the City to set forth rules and regulations for the use and

availability of the System and to establish the basis upon which charges for the use and availability of the System will be imposed by the City and notice of public hearing was published as required by Section 69-7-111, Montana Code Annotated. A public hearing was held on August 22, 2016, commencing at 7:30 p.m. at the City Hall, 112 1st Street South, Shelby, Montana for the purpose of hearing comments from the public on establishing the System and the proposed establishment of System charges; and

WHEREAS, following the public hearing on establishing the System, the Council approved on second reading Ordinance No. 827; and

WHEREAS, based on public comment at and relating to the public hearing on August 22, 2016 regarding establishing bases for charging for the use and availability of the System, the Council determined to continue the public hearing to its meeting on September 19, 2016, at 7:30 p.m., Council Chamber, Shelby City Hall, 112 1st Street South, Shelby Montana; and

WHEREAS, a notice of the continued public hearing regarding establishing the bases for charging for the use and availability of the System, and setting forth the modified bases as a result of prior public comment, was published on August 31, 2016, September 7, 2016, and September 14, 2016, and mailed to all users of the System on September 8, 2016; and

WHEREAS, the continuation of the public hearing was held on September 19, 2016, 2016 commencing at 7:30 p.m. at the City Hall, 112 1st Street South, Shelby, Montana, and all persons appearing were given an opportunity to speak at the public hearing; and

WHEREAS, that public hearing was finally closed on September 19, 2016; and

WHEREAS, the Council subsequently conducted additional public meetings and hearings on the System and rates and charges related thereto; and

WHEREAS, the Council determined it was in the best interests of the City to reduce the initial scope of the System to be constructed; and

WHEREAS, following a determination to reduce the initial scope of the System, a notice of public hearing was mailed to all persons who own property in the City and to all customers of the System, notifying them that pursuant to Resolution No. 1949, adopted February 13, 2017, it was the intention of the City to establish a basis on which storm water drainage system charges are determined and charged and proposing rates and charges, and notice of public hearing was published as required by Section 69-7-111, Montana Code Annotated; and

WHEREAS, a public hearing was held on March 13, 2017 at 6:30 p.m. at the City Hall, 112 1st Street South, in Shelby, Montana, for the purpose of hearing comments from the public on the establishment of the proposed rates and charges for the System; and

WHEREAS, all persons appearing were given an opportunity to speak at the public hearing; and

WHEREAS, the Council, having received ample public comment, having afforded the opportunity for ample public comment, and having made adjustments to the System and the

proposed rates and charges, now desires to approve the bases on which rates and charges for the use and availability of the System will be imposed consistent with the most recent notices relating to the public hearing on March 13, 2017.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City as follows:

Section 1. Rates and Charges.

1.1. Storm Water Drainage Charge. To pay the costs of operating and maintaining the System and to finance or reimburse the City for costs of designing, constructing, and repairing or replacing the System and to establish necessary or appropriate reserves, effective as of the June 2017 billing, the City hereby establishes rates, charges, and classifications for the use and availability of the System (the "Storm Water Drainage Charge"), with the amount of the Storm Water Drainage Charge determined as follows:

<u>Property Type</u>	<u>Storm Water Drainage Charge Per Property¹</u>
Residential Metered Property	\$95.00/year
Non-Residential Metered Property	\$95.00/year per ERU (1 ERU = 3000 sq. ft. impervious area)
Undeveloped Non-Metered Property	\$0.0025/sq. ft. per year capped at \$625.00 per parcel

¹Billed as described in Section 2 below.

Section 2. Billing. The City will charge owners of Properties that receive a monthly water and/or sewer bill (i.e., a metered Property) the Storm Water Drainage Charge by including with such bill the applicable Storm Water Drainage Charge. For undeveloped Properties that are not connected to the municipal water or sewer system and that therefore do not receive a water or sewer bill (i.e., a Non-Metered Property), for administrative convenience only, the Storm Water Drainage Charge will be placed on the property tax statements applicable to such Properties. The amount of such charge will equal each year the dollar amount determined by multiplying \$0.0025 by the square footage of such Property for the Storm Water Drainage Charge, and approximately one-half of such amount (up to \$625 per parcel per year) will be due with the November 30 property tax payments and approximately one-half of such amount will be due with the May 31 property tax payments.

Section 3. Late Charges. The City contemplates imposing a reasonable, just, and appropriate late fee following the approval of the Storm Water Drainage Charge by adjusting its late fee currently applicable to other of its municipal utilities.

Section 4. Amount of Increase. The monthly flat rate based on classification of the Properties and applicable to metered Properties and Non-Metered Properties are new charges in conjunction with segregating the Existing Storm Water Drainage Improvements as the initial part of the System and establishing and constructing the new System. Accordingly, all of the Storm Water Drainage Charge will be an increase over current utility bills, recognizing that in the absence of the new System, rates and charges relating to the Sanitary Sewer System would need to be increased more rapidly to deal with the deleterious effects that storm and surface waters are having on the Sanitary Sewer System.

Section 5. Determination of Annual Budget for System. Each year the Council of the City shall determine the amount of money needed to pay the costs of the System including but not limited to: (a) the payment of the reasonable expense of operation and maintenance of the System; (b) administration of the System; (c) the payment of principal and interest on any bonded or other indebtedness of the System; and (d) the establishment or maintenance of any required reserves, including reserves needed for expenditures for depreciation and replacement of facilities, as may be determined necessary from time to time by the Council or as covenanted in the ordinance or resolution authorizing any outstanding bonds of the System. Based on the annual needs of the System, the Council will establish monthly or semi-annual rates and charges for the use or availability of the System.

Section 6. Further Rate Increases. Subsequent adjustments to the Storm Water Drainage Charge or adoption of a new charge may be made by resolution of the Council duly adopted after a public hearing with notice thereof given as provided by law.

Section 7. Effective Date of Resolution. This resolution shall be immediately filed with the City Finance Officer and shall become effective 10 days after filing with the City Finance Officer.

Passed and approved this 20th day of March, 2017.

Larry J. Bonderud, Mayor

ATTEST:

Jade Goroski, Finance Officer









MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "Agreement") dated September ____, 2018, entered into by and between **THE CITY OF SHELBY** ("Shelby"), and **THE TOWN OF KEVIN** ("Kevin"). The Parties may be referred to hereafter individually as a "Party" and collectively as the "Parties".

Recitals

WHEREAS, pursuant to Mont. Code Ann. §3-11-101, each town and city must have a court; and,

WHEREAS, pursuant to Mont. Code Ann. §3-11-205, a town is authorized to designate a justice of the peace, or city judge of another city or town to act as the city judge of that town; and

WHEREAS, pursuant to the foregoing, Kevin has reached an agreement with Toole County to utilize the facilities and personnel of the Toole County Justice Court as the Town Court for the Town of Kevin; and

WHEREAS, the City of Shelby also utilizes the facilities and personnel of the Toole County Justice Court as the Shelby City Court pursuant to a separate agreement between the County and City of Shelby; and

WHEREAS, the Montana Supreme Court requires each court in Montana to use a specific case management program commonly called FullCourt which is a statewide system that tracks all criminal cases including levied fines and fine payments; and

WHEREAS, the Toole County Justice Court and Shelby City Court use FullCourt for case management as required; and

WHEREAS, the Kevin Town Court is also required to use FullCourt; and,

WHEREAS, the Montana Supreme Court Administrator is the only person authorized to establish accounts in the FullCourt system; and

WHEREAS, due to system constraints, the Montana Supreme Court Administrator is unable to establish another account on the Toole County Justice Court's FullCourt system for the Kevin Town Court; and

WHEREAS, all fines levied by the Kevin Town Court will have to be paid to Kevin through either the City of Shelby or Toole County; and

WHEREAS, Shelby has agreed to allow Kevin to utilize Shelby's FullCourt account for management of all cases pending before the Kevin City Court including the payment of levied fines; and

Now therefore, the Parties hereby agree that the recitals above are true and correct, and accurately describe the purposes and intentions of the parties to agree as follows:

- 1) **Use of Shelby City Court FullCourt Account.** Kevin shall have the full use of the City's FullCourt Account and that all cases pending before the Kevin Town Court shall be run through the FullCourt account for Shelby.
- 2) **Management of Fines, Fees, Costs and Expenses.** Any fines, fees, surcharges, costs, expenses or other assessments collected in any case or matter by the Kevin City Court shall be deposited into the general fund for the City of Shelby. On at least a monthly basis, Shelby shall tender to Kevin any funds collected on behalf of Kevin along with an accounting for any funds collected on behalf of Kevin during that period. If there are no funds collected by the City of Shelby on behalf of Kevin during a particular month, then Shelby shall have no obligation to provide an accounting to Kevin as contemplated herein.
- 3) **Additional Acts.** The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary and useful to effectuate the purposes and provisions of this Agreement.
- 4) **Modification or Revocation.** This Agreement may not be modified except by a written instrument executed by all Parties to this Agreement. This Agreement may be revoked by either Party by sixty (60) days written notice to the other Party.
- 5) **Applicable Law.** This Agreement shall be governed by and construed in accordance with Montana law.

CITY OF SHELBY

By: _____
Gary McDermott, Mayor

TOWN OF KEVIN

By: _____
Robert W. Fagan, Mayor

LICENSE AND INDEMNITY AGREEMENT

THIS LICENSE AND INDEMNITY AGREEMENT ("License") is made as of the _____ day of _____, 2018, by and between **ABS MT-O LLC**, a Delaware limited liability company ("Licensor"), and the **City of Shelby**, a municipal corporation ("Licensee").

WHEREAS, Licensor owns a retail building and parking lot at 130 5th Avenue North, Shelby, Montana (the "**Store Premises**"); and

WHEREAS, Licensee desires to enter into a portion of the parking lot of the Store Premises shown as the "**Licensed Premises**" on **Exhibit "A"** attached hereto and incorporated herein for the sole purpose of providing and maintaining the existing greenbelt area and improvements thereon for the general use by the public;

NOW, THEREFORE, Licensor and Licensee agree as follows:

- 1.** In consideration of the covenants herein made by Licensee, Licensor does hereby grant to Licensee the privilege and license to use the Licensed Premises for a period commencing on the date hereof and continuing until such time as this License is terminated pursuant to Section 6 below. Licensee may use the Licensed Premises for the sole purpose of (i) providing a greenbelt area e of the public and (ii) maintaining the Licensed Premises and the improvements thereon by providing water service thereto, mowing the same, clearing debris from the same, painting the same, and providing general maintenance as necessary to keep the Licensed Premises in good visual condition. Licensor agrees to waive a License Fee.
- 2.** Licensee shall at all times during the term of this License (i) keep the Licensed Premises in a clean, neat and safe condition, (ii) prescribe and cause to be observed by all those using the Licensed Premises reasonable rules and regulations which Licensee may deem prudent (as approved by Licensor) for the protection of the public, including but not limited to safety rules and provisions prohibiting smoking and nuisances. Notwithstanding anything to the contrary herein, Licensee, and not Licensor, shall be obligated to provide all security services and measures necessary or appropriate for the safe and secure use of the Licensed Premises as contemplated by this License by the public. Licensor shall have no responsibility or obligations in connection with such safety or security. In addition, Licensee agrees that no sale, service, or consumption of alcoholic beverages will be permitted on or about the Licensed Premises.
- 3.** Licensee shall indemnify and hold Licensor and its affiliates and subsidiaries harmless from and against any and all loss, damage, liability or claims (including, without limitation, costs and expense of litigation and reasonable attorneys' fees)

(collectively, "Claims") arising from, or connected with this License or the use by anyone of the Licensed Premises. Licensee hereby indemnifies, holds harmless and agrees to defend Licensor, its affiliates and subsidiaries from and against all claims, damages and expenses (including without limitation, reasonable attorney's fees and investigative and discovery costs) liabilities and judgments on account of damage to or theft of property occurring on the Licensed Premises arising out of the failure to provide any such security services or the failure to repair any such damages. Licensee's obligations with respect to indemnification hereunder shall remain effective, notwithstanding the expiration or termination of this License, as to claims arising or accruing prior to the expiration or termination of this License.

4. Licensee shall maintain at its sole cost and expense at least the following insurance covering its obligations under this License:

\$750,000 for each general liability claim.

\$1,500,000 aggregate limit for each occurrence.

Licensee shall comply with the provisions of the Montana Workers' Compensation Act in accordance with Sections 39-71-401, 405, and 417, Mont. Code Ann.

Such insurance shall be issued by one or more responsible insurance carriers acceptable to Licensor and licensed to do business in Montana. Upon execution of this License, Licensee shall provide Licensor with a Certificate of Insurance which shall indicate all insurance coverage required by the provisions herein and which shall provide that Licensor shall be provided with thirty (30) days written notice prior to cancellation or modification of such policy.

5. This License may be terminated by either party for any reason in its sole and absolute discretion upon thirty (30) days written notice to the other party or (ii) immediately by Licensor in the event Licensee breaches this License. Licensee shall not be entitled to, and hereby waives, any claim of damages against Licensor for revocation or termination of this License, with or without cause.

6. Upon termination of this License, Licensee shall immediately, in a good, careful and workmanlike manner remove its property from the Licensed Premises, and return the Licensed Premises to Licensor in as good a condition as when received.

7. Licensee may not assign its rights under this License to any party without the prior express, written permission of Licensor.

8. All notices given pursuant to this License shall be in writing and shall be given by certified United States mail, or other established express delivery service (such as

Federal Express), postage or delivery charge prepaid, addressed to the appropriate party as set forth below:

Licensor: ABS MT-O LLC
Attn: Real Estate Law
250 Parkcenter Blvd.
Boise, ID 83726

Licensee: City of Shelby
112 1st Street S
Shelby, MT 59474

The person and address to which notices are to be given may be changed at any time upon written notice to the other party.

9. Licensee warrants and affirms to Licensor that any and all persons signing this License for Licensee are authorized and empowered to so sign and such signing by such person or persons does bind Licensee to all the terms, covenants and conditions of this License.

10. This License may be executed in counterparts and the parties agree that facsimile signatures will have the same force and effect as original signatures.

City of Shelby
a municipal corporation

ABS MT-O LLC
a Delaware limited liability company

By _____
Name:
Title:

By _____
Name: Bradley R. Beckstrom
Title: Authorized Signatory

Exhibit A

